

STATE OF MICHIGAN
COURT OF APPEALS

AMERICAN LEGION POST 267,

Petitioner-Appellant,

v

TOWNSHIP OF LYON,

Respondent-Appellee.

UNPUBLISHED
November 22, 2011

No. 300613
Tax Tribunal
LC No. 00-341901

Before: TALBOT, P.J., and FITZGERALD and MARKEY, JJ.

PER CURIAM.

Petitioner, American Legion Post 267, which is located in Davison, Michigan, owns a cabin located on leased land¹ near Higgins Lake in Lyon Township, Michigan. In 2007, petitioner received a notice from the Lyon Township Board of Review indicating that the board had made an adjustment to plaintiff's ad valorem property tax assessment for 2007. Petitioner's appeal to the Michigan Tax Tribunal was unsuccessful. The Tax Tribunal's decision, which is applicable to the tax years 2007, 2008, and 2009, affirmed the denial of petitioner's claim of exemption. Petitioner appeals from that determination. We reverse and remand.

Petitioner, a Michigan corporation, owns a post in Davison. This case concerns the tax status, in 2007, 2008, and 2009, of a cabin owned by petitioner and leased to its members on a weekly basis pursuant to a "cabin service point system" used to determine the order of reservation selection. According to the "Davison Post 267 Higgins Lake Cabin Rules," the purpose of the cabin is for the "rest, rehabilitation and recreation of veterans belonging to" the post.

In July 2007, the Lyon Township Board of Review adjusted the ad valorem property tax assessment on the cabin on the ground that "It has been brought to the attention of the assessor that a clerical error . . . or other specific errors relative to the correct assessment have been made in the assessment of the property . . ." Petitioner appealed this determination to the small claims

¹ The land was formerly owned by the State of Michigan and leased to the American Legion, Department of Michigan. The land was deeded to the Camp Curnalia Cottage Owners Association, Inc., in May 2007.

division of the Tax Tribunal, asserting that it was improperly denied a property tax exemption. A notice of hearing provided to the parties advised that a “copy of all documents each party wishes to be considered as evidence in this hearing must be submitted to the Tribunal and opposing party at least 14 days prior to the date of the hearing.”

In pertinent part, petitioner maintained that the cabin was exempt from taxation under MCL 211.7p of the general property tax act, MCL 211.1 *et seq.* MCL 211.7p provides:

Real estate or personal property owned and occupied as memorial homes or posts is exempt from taxation under this act. As used in this section, memorial homes includes real estate and buildings and owned and occupied solely by any veterans association, organization, or institution of the armed forces of the United States which is incorporated under the laws of this state and used solely for the purposes for which they were incorporated, but does not include buildings or portions of buildings which are not restricted to members and guests and are used for commercial operations permitting the patronage of the general public, including but not limited to dancehalls, bars with class C liquor licenses, bowling alleys, pool or billiard rooms, television rooms, and game rooms. Incidental or casual renting or leasing for nonveteran purposes is no bar to the exemption. It is the legislative intent that the making available of the exempt facilities for public assemblages or social affairs shall not be adequate cause to deny this exemption in whole or in part.

Among his findings of fact, the hearing referee found that the cabin is utilized solely as a vacation property for select weeks throughout the year. Among his conclusions of law, the hearing referee concluded that petitioner “has failed to meet the burden of proof, as required by MCL 205.737(3), for the tax year(s) at issue.” Specifically, the hearing referee concluded in relevant part that the cabin is “not primarily utilized for business purposes to carry out the functions of the organization. Rather, the use is strictly social.” The hearing referee distinguished *American Legion Memorial Home Ass’n of Grand Rapids v City of Grand Rapids*, 118 Mich App 700; 325 NW2d 543 (1982), on the ground that the building in that case was “used for business meetings, ceremonies, and other services,” and that the social use of the building was merely incidental and not the primary use of the building.

In *American Legion* 118 Mich App 700, this Court established a four-element test that must be met to qualify for the memorial home exemption:

1. The property must have been owned and occupied by the exemption claimant.
2. The exemption claimant must have been a memorial home of world war veterans.
3. The exemption claimant must have been incorporated under the laws of Michigan.

4. The buildings and other property thereon must have been occupied by the exemption claimant solely for the purposes for which it was incorporated. [*Id* at 706-707.]²

Petitioner argues on appeal that the referee erred by considering the articles of incorporation of a different legal entity and misapplying the holding of *American Legion*.

Review of a decision of the Michigan Tax Tribunal is governed by Article VI, § 28 of the Michigan Constitution. *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 482; 473 NW2d 636 (1991). Unless fraud is alleged, this Court's review is limited to whether the tribunal made an error of law or adopted a wrong principle. *Georgetown Place Co-op v City of Taylor*, 226 Mich App 33, 43; 572 NW2d 232 (1997). The tribunal's factual findings are deemed conclusive provided they are supported by competent, material, and substantial evidence on the whole record. *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990); Const 1963, art 6, § 28. When statutory interpretation is at issue, appellate review of the tribunal's decision is de novo. *Dekoning v Dep't of Treasury*, 211 Mich App 359, 361; 536 NW2d 231 (1995). Tax exemptions are disfavored, and the burden of proving the right to an exemption is on the party claiming the exemption. *Elias Bros Restaurants, Inc v Treasury Dept*, 452 Mich 144, 150; 549 NW2d 837 (1996). Tax exemptions must be strictly construed in favor of the taxing body because tax exemptions upset the desirable balance achieved by equal taxation. See *Michigan Baptist Homes & Dev Co v Ann Arbor*, 396 Mich 660, 669-670; 242 NW2d 749 (1976).

The hearing referee's decision was based upon the test set forth in *American Legion* and was premised upon the fourth element; that is, whether the cabin is utilized for the purposes for which petitioner is incorporated. Petitioner filed exceptions³ to the Proposed Opinion and Judgment and asserted, in part, that the hearing referee did not rely on the correct articles of incorporation. Petitioner quoted the language of its articles of incorporation in its exceptions. The tribunal concluded that:

The Hearing Referee properly considered the testimony and evidence submitted in the rendering of the Proposed Opinion and Judgment. More specifically, the Tribunal has reviewed the exceptions and determined that the

² The relevant statute in *American Legion* was MCL 211.7(d). MCL 211.7(d) is now codified as MCL 211.7p. A 1980 amendment to MCL 211.7(d) replaced "world war veterans" with "any veterans association." PA 1980, No 142. The 1980 amendment also added the final sentence of MCL 211.7p: "It is the legislative intent that the making available of the exempt facilities for public assemblage or social affairs shall not be adequate cause to deny this exemption in whole or in part." *Id*.

³ The Proposed Opinion and Judgment provided that "The parties have 20 days from date of entry of this POJ to notify the Tribunal in writing if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions). The exceptions are *limited* to the evidence submitted prior to or at the hearing and any matter addressed in the POJ.

issues raised by the exceptions were considered in the rendering of the Proposed Opinion and Judgment or lack any merit.

The hearing referee clearly relied on the articles of incorporation of an entirely different entity in deciding petitioner's claim. The hearing referee cited the articles of incorporation of the American Legion Memorial Home Association of Grand Rapids as cited in *American Legion*, 118 Mich App at 703. The hearing referee clearly erred in considering the articles of incorporation of a different entity as evidence of petitioner's articles of incorporation. Thus, the hearing referee's decision was not based on competent, material, and substantial evidence.

Given the record presented, however, we are unable to resolve this case. Although it appears that petitioner provided its articles of incorporation to the Tax Tribunal, the record is less than clear with regard to *when* petitioner provided its articles of incorporation to the Tax Tribunal.⁴ Consequently, remand is necessary to allow the Tax Tribunal to develop the record and, if applicable, to reconsider the case using petitioner's articles of incorporation. *Hicks v Dep't of Commerce*, 220 Mich App 501, 510; 560 NW2d 54 (1996).

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot

⁴ We recognize that petitioner has the burden of proof with regard to the exemption and that the tribunal advised petitioner that it had to submit any evidence that it wished to have the hearing referee consider at least 14 days before the hearing.